



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**COPY MAILED**

**NATIONAL INSTITUTES OF HEALTH  
P.O. BOX 2903  
MINNEAPOLIS MN 55402**

**FEB 28 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Michael Guttman et al :  
Application No. 10/076,882 : DECISION ON PETITION  
Filed: February 14, 2002 :  
Attorney Docket No. 11613.50USU1 :  
:

This is a decision on the Communication, filed January 15, 2008, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The Office sincerely apologizes for any inconvenience caused petitioner in this matter.

This application was technically held abandoned for failure to timely respond to the Office action of January 14, 2004, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before April 14, 2004.

Petitioner states that a timely reply was mailed via certificate of mailing on April 14, 2004, which included the following papers: Response to the Office Action mailed January 14, 2004. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated April 14, 2004, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of January 14, 2004 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed on April 14, 2004.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

This application is being referred to Technology Center AU 3737 for appropriate action in the normal course of business on the reply received with petition.



Karen Creasy  
Petitions Examiner  
Office of Petitions

cc:

**MERCHANT & GOULD P.C.  
P.O. BOX 2903  
MINNEAPOLIS, MINNESOTA 55402-0903**